

2002

State of Utah v. William Raymond Wallace : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Patrick Lindsay, Margaret P. Lindsay; Aldrich, Nelson, Weight and Esplin; Attorneys for Appellant. Karen A. Klucznik; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Sirena M. Wissler, William K. Kendall; Deputy Salt Lake County District Attorneys; Attorneys for Appellee.

Recommended Citation

Brief of Appellee, *Utah v. Wallace*, No. 20021021 (Utah Court of Appeals, 2002).
https://digitalcommons.law.byu.edu/byu_ca2/4089

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
	:	Case No. 20021021-CA
v.	:	
WILLIAM RAYMOND WALLACE,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

Appeal from a restitution award included in a sentence for aggravated kidnapping, a first degree felony, in violation of Utah Code Ann. § 76-5-302 (1999), in the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable Ann Boyden, Presiding

PATRICK LINDSAY (8309)
MARGARET P. LINDSAY (6766)
Aldrich, Nelson, Weight & Esplin
43 East 200 North
P.O. Box "L"
Provo, UT 84603-0200

ATTORNEYS FOR APPELLANT

KAREN A. KLUCZNIK (7912)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

SIRENA M. WISSLER
WILLIAM K. KENDALL
Deputy Salt Lake County
District Attorneys

ATTORNEYS FOR APPELLEE

ORAL ARGUMENT NOT REQUESTED

FILED
Utah Court of Appeals

JAN 16 2004

Paulette Stagg
Clerk of the Court

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
	:	Case No. 20021021-CA
v.	:	
WILLIAM RAYMOND WALLACE,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

Appeal from a restitution award included in a sentence for aggravated kidnapping, a first degree felony, in violation of Utah Code Ann. § 76-5-302 (1999), in the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable Ann Boyden, Presiding

PATRICK LINDSAY (8309)
MARGARET P. LINDSAY (6766)
Aldrich, Nelson, Weight & Esplin
43 East 200 North
P.O. Box "L"
Provo, UT 84603-0200

ATTORNEYS FOR APPELLANT

KAREN A. KLUCZNIK (7912)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

SIRENA M. WISSLER
WILLIAM K. KENDALL
Deputy Salt Lake County
District Attorneys

ATTORNEYS FOR APPELLEE

ORAL ARGUMENT NOT REQUESTED

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
JURISDICTION AND NATURE OF PROCEEDINGS	1
ISSUE ON APPEAL AND STANDARD OF REVIEW	1
RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	2
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	
THE TRIAL COURT PROPERLY ORDERED DEFENDANT TO PAY RESTITUTION FOR AMY TAVEY’S MURDER WHERE DEFENDANT STATED AT SENTENCING THAT HE “FE[LT] RESPONSIBLE FOR HER DYING”	5
CONCLUSION	11
ADDENDUM A - Utah Code Ann. § 76-3-201 (Supp. 2002)	

TABLE OF AUTHORITIES

STATE CASES

<i>State v. Bickley</i> , 2002 UT App 342, 60 P.3d 582	1, 8, 9
<i>State v. Burns</i> , 2000 UT 56, 4 P.3d 795	5
<i>State v. Coonce</i> , 2001 UT App 355, 36 P.3d 533	5
<i>State v. Galli</i> , 967 P.2d 930 (Utah 1998)	9
<i>State v. Mast</i> , 2001 UT App 402, 40 P.3d 1143	8, 9
<i>State v. McKinnon</i> , 2002 UT App 214, 51 P.3d 729	5
<i>State v. Tooele County</i> , 2002 UT 8, 44 P.3d 680	5, 9
<i>State v. Watson</i> , 1999 UT App 273, 987 P.2d 1289	7, 8, 9
<i>Stephens v. Bonneville Travel, Inc.</i> , 935 P.2d 518	5

STATE STATUTES

Utah Code Ann. § 76-3-201 (Supp. 2002)	2, 6, 7, 9, 10
Utah Code Ann. § 78-2a-3 (Supp. 2003)	1

OTHER WORKS CITED

American Heritage Dictionary of the English Language (4 th ed. 2000)	7
Merriam-Webster Dictionary (last visited 12/30/2003)	6, 7

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	Case No. 20021021-CA
WILLIAM RAYMOND WALLACE,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a restitution award included in a sentence for aggravated kidnapping, a first degree felony. This Court has jurisdiction pursuant to the pour-over provisions of Utah Code Annotated § 78-2a-3(2)(j) (Supp. 2003).

ISSUE ON APPEAL AND STANDARD OF REVIEW

Did the trial court properly order defendant to pay restitution for Amy Tavey's murder where defendant stated at sentencing that he "fe[lt] responsible for her dying"?

This Court "will not disturb a trial court's restitution order unless it exceeds that prescribed by law or [the court] otherwise abused its discretion." *State v. Bickley*, 2002 UT App 342, ¶ 5 (internal citations omitted). This Court "review[s] a trial court's interpretation of restitution statutes for correctness." *Id.*

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. § 76-3-201 (Supp. 2002), relevant to this appeal, is attached at Addendum A.

STATEMENT OF THE CASE

Defendant was charged by information with aggravated robbery and aggravated kidnapping (R. 2-5). Notice was given with both charges that defendant was subject to enhanced penalties because defendant used a dangerous weapon in committing the crimes and he committed the crimes in concert with two or more persons. (R. 2-5). After a three-day trial, defendant was convicted of aggravated kidnapping (R. 106). The jury also found that, in committing the aggravated kidnapping, defendant did not use a firearm but did act in concert with two or more persons (R. 107-08). Defendant was acquitted of aggravated robbery (R. 109).

Defendant's presentence investigation report (PSI) recommended that defendant pay restitution both for the items taken during the robbery of the kidnapping victim, Keith Williams, and for funeral and other costs related to the murder of Williams's girlfriend, Amy Tavey, which occurred during the same criminal episode in which Williams was kidnapped (PSI at 4-5, 16; Supp. Memorandum at R. 166-69). Defense counsel objected to restitution either for the robbery, for which he was not convicted, or for the murder, for which he was not charged (R. 214:5-6, 13). However, in his own statement to the court,

defendant stated of Tavey's murder: "I never said to nobody that I wasn't there I feel responsible for her dying" (R. 214:13-14).

The trial court sentenced defendant to a prison term of fifteen-years-to-life (R. 176-77; R. 214:15). The trial court then ordered that defendant pay restitution, jointly and severally with the others responsible, for Amy Tavey's murder (R. 176-77; R. 215:15-16). The court did not order that defendant pay restitution to Keith Williams for the items taken from him during the kidnapping (R. 176-77; R. 214:15-16).

Defendant timely appealed (R. 179-80). The supreme court transferred the matter to this Court for disposition (R. 210).

STATEMENT OF THE FACTS

Late in the evening on May 3, 2002, defendant and several of his friends lured Keith Williams to their apartment, and, after beating him up, bound him with duct tape and forced him into the trunk of his car while they threatened to kill him (R. 215:167-69, 174, 176-77, 179, 204; R. 216: 232, 235, 240, 244, 246, 376, 387-88, 393-95, 400-01; R. 217:454-56, 462, 467-68). With Williams in the trunk, defendant and two of his friends drove off in Williams's car (R.215:185; R. 216:402, 405; R. 217:466). They were accompanied by another car containing more of defendant's friends, as well as Williams's girlfriend, Amy Tavey (R. 215:184-85, 186; R. 217:470).

A short while later, when the cars stopped to drop one of the friends off at a house near the Jordan River, defendant and his friends realized that Williams was no longer in the trunk (R. 216:247, 403). The next day, the body of Amy Tavey was found

in the Jordan River; Amy had been shot to death (R. 216:266, 277). That same day, defendant was heard saying, “We killed somebody last night” (R. 216:309).

Defendant and two other friends then fled to Las Vegas, Nevada (R. 216:339-41; R. 217:476-78, 481-83). When they were arrested a short while later, a gun matching that used to kill Amy Tavey was found with them (R. 216:283, 340, 352, 354, 358-61).

At his sentencing, defendant told the court: “I never said to nobody that I wasn’t there, I never said what happened didn’t happen. I feel responsible for her dying. Do you know what I mean? I am not lying about that. I know there are some things that I could have did” (R. 214:13).

SUMMARY OF THE ARGUMENT

Defendant claims that the trial court erred in ordering him to pay restitution for Amy Tavey’s death because he was neither charged with nor convicted of that crime, and because his counsel objected to such restitution at defendant’s sentencing hearing. However, under the restitution statute, a trial court can order a defendant to pay restitution for any criminal conduct for which he admits responsibility at sentencing, whether or not he also admits criminal liability for the conduct. In this case, defendant admitted at sentencing that “I feel responsible for [Amy Tavey] dying.” Given that admission, the trial court properly ordered defendant to pay restitution for Amy Tavey’s murder.

ARGUMENT

THE TRIAL COURT PROPERLY ORDERED DEFENDANT TO PAY RESTITUTION FOR AMY TAVEY'S MURDER WHERE DEFENDANT STATED AT SENTENCING THAT HE "FE[LT] RESPONSIBLE FOR HER DYING"

Defendant claims that the trial court erred in ordering him to pay restitution for the murder of Amy Tavey because "he was never charged nor convicted of any crime relating to the murder victim's death and . . . he didn't agree to pay said restitution but rather contested its entry at the time of sentencing." *Aplt. Br.* at 33. Defendant's claim fails under the plain language of the restitution statute.

This Court's "primary goal in interpreting statutes is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve." *State v. Burns*, 2000 UT 56, ¶ 25, 4 P.3d 795. In doing so, this Court "assume[s] that 'each term in the statute was used advisedly.'" *Stephens v. Bonneville Travel, Inc.*, 935 P.2d 518, 520 (Utah 1997) (citations omitted. In addition, "statutory term[s] should be interpreted and applied according to [their] usually accepted meaning, where the ordinary meaning of the term[s] results in an application that is neither unreasonably confused, inoperable, nor in blatant contradiction of the express purpose of the statute." *State v. Coonce*, 2001 UT App 355, ¶ 9, 36 P.3d 533 (citations omitted). Finally, this Court "'avoid[s] interpretations that will render portions of a statute superfluous or inoperative.'" *State v. Tooele County*, 2002 UT 8, ¶ 10, 44 P.3d 680 (citation omitted); *see also State v. McKinnon*, 2002 UT App 214, ¶ 6 n.4, 51 P.3d 729.

Utah's restitution statute, section 76-3-201 of the Utah Code, provides:

When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.

Utah Code Ann. § 76-3-201(4)(a) (Supp. 2002). A “victim” is defined as “any person,” other than a co-participant, “who the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities.” *Id.* § 76-3-201(1)(e)(ii).

“Criminal activities” is defined as “any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.” *Id.* § 76-3-201(1)(b).

Defendant does not challenge the meaning of subsections (4)(a) or (1)(e)(i) of the restitution statute. *See* Aplt. Br. at 33-36. Rather, he challenges whether restitution for Amy Tavey’s murder was appropriate under subsection (1)(b). *See id.*

As defendant notes in his brief, defendant was neither charged with nor convicted of Amy Tavey’s murder. *See* Aplt. Br. at 35. Thus, restitution for Amy’s murder was proper only if the murder was “criminal conduct for which the defendant admit[ted] responsibility to the sentencing court with or without an admission of committing the criminal conduct.” Utah Code Ann. § 76-3-201(1)(b).

The plain meaning of “admit” in this context is “to concede as true or valid,” “to make acknowledgment.” *Merriam-Webster Dictionary*, at <http://www.m-w.com/cgi->

[bin/dictionary?book=Dictionary&va=admit](http://www.bartleby.com/61/37/A0093700.html) (last visited 12/30/2003); *see also* American Heritage Dictionary of the English Language (4th ed. 2000), at <http://www.bartleby.com/61/37/A0093700.html> (last visited 12/30/2003) (defining “admit” to include “[t]o grant to be real, valid, or true; acknowledge,” “to make acknowledgment”).

The plain meaning of “responsibility” is “the quality or state of being responsible,” as in “moral, legal, or mental accountability,” or “something for which one is responsible.” *Merriam-Webster Dictionary*, at <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=responsibility> (last visited 12/30/2003); *see also* American Heritage Dictionary of the English Language (4th ed. 2000), at <http://www.bartleby.com/61/25/R0182500.html> (last visited 12/30/2003) (defining “responsibility” as “[t]he state, quality, or fact of being responsible,” “[s]omething for which one is responsible”).

Applying these definitions to section 76-3-201(1)(b), a person may be ordered to pay restitution whenever he concedes or acknowledges his accountability—criminal, moral, or otherwise—for criminal conduct which has caused another injury.

The one case cited by defendant, *State v. Watson*, 1999 UT App 273, 987 P.2d 1289, does not alter this conclusion. In *Watson*, the defendant was originally charged with criminal homicide, attempted criminal homicide, and obstruction of justice for allegedly driving co-defendants to and from the scene of the crime and then disposing of the car she used to drive them. 1999 UT App 273, ¶ 2. However, the defendant pleaded

guilty only to attempted obstruction of justice. *Id.* Moreover, her admissions at sentencing suggested at most only that she heard shots, saw people running to her car, and drove them away from the scene. 1999 UT App 273, ¶ 4. Under those circumstances, this Court held it was error to order the defendant to pay restitution costs associated with the murder charge. 1999 UT App 273, ¶ 5.

In doing so, this Court noted that, to conclude that the defendant was responsible for the murder, “the trial court . . . made inferences about [the defendant’s] state of mind based upon the evidence before it.” *Id.* Such inferences were not proper where the restitution statute “does not ask the trial court to analyze a defendant’s state of mind, but rather asks it to focus on admissions made to the sentencing court.” *Id.*

Thus, this Court held, the statute “requires that responsibility for the criminal conduct be firmly established, much like a guilty plea, before the court can order restitution.” *Id.*; *see also State v. Bickley*, 2002 UT App 342, ¶ 10, 60 P.3d 582 (rejecting State’s claim that defendant agreed to pay all child support owed because “[w]ithout making inferences as the trial court did, it cannot be said that [Defendant in this case] admitted responsibility for’ restitution prior to 1997”) (quoting *Watson*, 1999 UT App 273, ¶ 5) (second alteration in original); *State v. Mast*, 2001 UT App 402, ¶¶ 17-18, 40 P.3d 1143 (rejecting State’s claim that defendant who pleaded guilty to receiving stolen property admitted responsibility for underlying burglary when she acknowledged to court “that her version of events was ‘far-fetched’”; reiterating that, before defendant can be

ordered to pay restitution, her responsibility must be “‘firmly established, much like a guilty plea’”) (citation omitted).

In the context of the plain language of section 76-3-201(1)(b), the import of *Watson*, *Bickley*, and *Mast* is clear: If a defendant has not been convicted of the criminal conduct, he may only be ordered to pay restitution for it if he expressly acknowledges—i.e., firmly establishes—responsibility for that conduct at sentencing. *See Bickley*, 2002 UT App 342, ¶ 10; *Mast*, 2001 UT App 402, ¶¶ 17-18; *Watson*, 1999 UT App 273, ¶ 5. Because, as previously discussed, the restitution statute does not require actual admission of guilt, *see* Utah Code Ann. § 76-3-201(1)(b), these cases reach no further.¹

Here, defendant told the trial court at sentencing, “I feel responsible for [Amy Tavey] dying” (R. 214:13-14). Thus, unlike in *Bickley*, *Mast*, or *Watson*, defendant here expressly admitted responsibility for the uncharged criminal conduct, in this case, Amy Tavey’s murder. Under the restitution statute, then, defendant could properly be ordered to pay restitution for that murder.

Still, defendant argues that restitution was improper because defendant’s trial counsel objected to it at defendant’s sentencing. *See* Appt. Br. at 36. However, trial counsel’s objection did nothing to detract from defendant’s admission. *See, e.g. State v.*

¹Indeed, to hold otherwise, i.e., to hold that the defendant must actually admit criminal guilt, would render the latter part of the statute—“with or without an admission of committing the criminal conduct”—inoperable. This Court must “‘avoid interpretations that will render portions of a statute superfluous or inoperative.’” *Tooele County*, 2002 UT 8, ¶ 10 (citation omitted).

Galli, 967 P.2d 930, 937-38 (Utah 1998) (holding that defense counsel’s statements at sentencing could not be attributed to defendant for purposes of determining restitution).

Alternatively, defendant claims restitution was improper because, at sentencing, defendant “was adamantly maintaining his innocence to even the conviction relating to Williams in addition to anything associated with Tavey.” *Aplt. Br.* at 36. As already discussed, however, the restitution statute focuses on a defendant’s admission of responsibility—legal, moral, or otherwise,—for the criminal conduct, not on the defendant’s admission of criminal liability for the conduct. *See Utah Code Ann. § 76-3-201(1)(b)* (providing defendant can be ordered to pay restitution “with or without an admission of committing the criminal conduct”). Thus, defendant’s refusal to acknowledge his guilt is irrelevant to whether restitution was properly ordered in this case.

Because defendant admitted responsibility for Amy’s murder to the sentencing court, even though he did not admit actually committing that crime, the trial court did not err in ordering defendant to pay restitution for that crime.

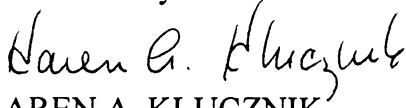
Consequently, defendant’s claim fails.

CONCLUSION

Based on the foregoing, the State asks this Court to affirm defendant's conviction and sentence, including the trial court's restitution order.

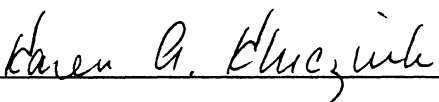
RESPECTFULLY SUBMITTED 16 January 2004.

MARK L. SHURTLEFF
Utah Attorney General


KAREN A. KLUCZNIK
Assistant Attorney General

CERTIFICATE OF MAILING

I certify that on 16 January 2004, I caused to be mailed, by U.S. Mail, postage prepaid, two accurate copies of this **BRIEF OF APPELLEE** to Patrick Lindsay and Margaret P. Lindsay, Aldrich, Nelson, Weight & Esplin, 43 East 200 North, P.O. Box "L," Provo, Utah 84603-0200, Attorneys for Appellant.



Addendum A

76-3-201. Definitions — Sentences or combination of sentences allowed — Civil penalties — Hearing.

- (1) As used in this section:
 - (a) "Conviction" includes a:
 - (i) judgment of guilt; and
 - (ii) plea of guilty.
 - (b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.
 - (c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.
 - (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.
 - (e) (i) "Victim" means any person who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.
 - (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.
- (2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:
 - (a) to pay a fine;
 - (b) to removal or disqualification from public or private office;
 - (c) to probation unless otherwise specifically provided by law;
 - (d) to imprisonment;
 - (e) on or after April 27, 1992, to life in prison without parole; or
 - (f) to death.
- (3) (a) This chapter does not deprive a court of authority conferred by law to:
 - (i) forfeit property;
 - (ii) dissolve a corporation;
 - (iii) suspend or cancel a license;
 - (iv) permit removal of a person from office;
 - (v) cite for contempt; or
 - (vi) impose any other civil penalty.
 - (b) A civil penalty may be included in a sentence.
- (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.
 - (b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

- (5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:
- (i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;
 - (ii) charged with a felony or a class A, B, or C misdemeanor; and
 - (iii) convicted of a crime.
- (b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:
- (i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or
 - (ii) the defendant was not transported pursuant to a court order.
- (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:
- (A) \$75 for up to 100 miles a defendant is transported;
 - (B) \$125 for 100 up to 200 miles a defendant is transported;
- and
- (C) \$250 for 200 miles or more a defendant is transported.
- (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.
- (d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.
- (6) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.
- (b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing.
- (c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.
- (d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.
- (e) In determining a just sentence, the court shall consider sentencing guidelines regarding aggravating and mitigating circumstances promulgated by the Sentencing Commission.
- (7) If during the commission of a crime described as child kidnapping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the highest minimum term in state prison. This subsection takes precedence over any conflicting provision of law.